

# Compendium of Position Papers

A Four Agency Framework of Roles and Responsibilities for Implementation of the Detroit River, St. Clair River, St. Marys River Areas of Concern Shared Remedial Action Plans and the Lake St. Clair Management Plan

**Original Feb. 2, 2000**  
**Last Update April 2019**

## Preface

The Great Lakes Water Quality Agreements (GLWQA) of 1972 and 1978 committed the governments of Canada and the United States to restore and enhance water quality in the Great Lakes System. The signing of the Amendments to the 1987 Protocol to the GLWQA further committed the governments of Canada and the United States to development and implementation of Remedial Action Plans (RAPs) for Areas of Concern (AOCs) in the Great Lakes. Three of these AOCs are centered on rivers that act as shared natural boundaries between Canada and the United States, Ontario and Michigan – the Detroit River, St. Clair River and St. Marys River.

The United States and Canada have pledged their cooperation to restore these shared AOCs under the terms of the GLWQA. A Four Agency Letter of Commitment was signed on April 17, 1998, by Environment Canada, the Michigan Department of Environmental Quality, the Ontario Ministry of the Environment, and the United States Environmental Protection Agency.

The letter identifies roles and responsibilities of the Four Agencies for the three shared AOCs, details commitments and strategies and highlights the importance of leadership. The Four Agencies will demonstrate their leadership through visibility, by empowering local leadership, by contributing to and facilitating implementation activities, by recognizing successes, by actively pursuing solutions to problems, by helping to define research needs and gaps and by facilitating the transfer of information and methodologies.

The Four Agencies originally developed the following position papers to explain how commitments made under the Letter of Commitment and the GLWQA will be applied to the shared AOCs. This compendium contains the 1998 Four Agency Letter of Commitment, the position papers, and the appendices.

The GLWQA was amended by protocol in 2012 and entered into force on February 12, 2013. The 2012 amendments separate AOCs and Lakewide Management Programs which had previously been in Annex 2 of the 1987 Agreement into Annex 1 and Annex 2, respectively. The revised GLWQA also modified how AOCs can be managed by creating a new category referred to as an “AOC in Recovery”; and by adding provisions that clarify consultation and reporting as well as explicitly articulating provisions for the removal of a Beneficial Use Impairment (BUI) designation when established criteria are met.

The papers within this Compendium have been updated to reflect changes under the revised GLWQA.

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# 1. Administration

## Letter of Commitment References

1.1 The Four Agencies recognize that each has responsibilities to support commitment made in the GLWQA as well as responsibilities under its respective regulatory system which each Agency will continue to adhere to.

1.2 The Four Agencies recognize the need to cooperate to achieve the goals outlined in each shared AOC as well as the need for each Agency to accomplish this through their individual distinctive forms of government, institutional arrangements, and approaches to RAP development and implementation.

1.3 The roles and responsibilities of the Four Agencies defined in this letter of Commitment will apply to all shared AOCs.

1.4 Canadian Agencies are to have the primary responsibility for the administration of the shared activities for the St. Marys and St. Clair RAPs, and the U.S. Agencies are to have the primary responsibility for the administration of the shared activities for the Detroit River RAP.

1.5 The Four Agencies intend to identify a contact/liaison for each of the shared AOCs.

1.6 The Four Agencies recognize that part of the shared accountability is to promote RAP implementation and to persuade other implementers to undertake remedial work within the appropriate jurisdiction.

1.7 The Four Agencies are committed to facilitation development of implementation mechanisms for the shared AOCs with local stakeholders and the public. It is recognized that the Four Agencies may contribute funds or other resources, separately or within partnerships, in support of these mechanism and that these implementation mechanisms may be different for each shared AOC.

Note: The Lake St. Clair Management Plan structure was not in place at the signing of the 1998 Four Agency Letter of Commitment. The management of Lake St. Clair is being accomplished separately by the U.S. and Canada; however, activities are coordinated through the Four Agency Management Committee and take into account impacts to and from the adjacent AOCs.

## Introduction

The following structure of administrative roles and responsibilities provides a mechanism for cooperation between Canada and the United States, while recognizing the national, provincial and state regulatory systems already in place.

- Individual agencies will focus their existing and new programs and resources to restore the shared AOCs and Lake St. Clair and will encourage other organizations to do likewise.
- To achieve the goals outlined in each shared AOC and Lake St. Clair, the Four Agencies will cooperate on shared responsibilities such as:
  - data sharing and consistency
  - promoting standardization of environmental criteria
  - delisting criteria
  - monitoring
  - public involvement
  - research
  - reporting progress
  - pooling resources
- To facilitate cooperation, the Four Agencies established the following committees under the Letter of Commitment, and agree to staff these committees at the appropriate level.

## Four Agency Structure

1. Four Agency Management Committee – This umbrella committee oversees the shared AOCs and Lake St. Clair. The membership consists of senior representatives from each of the Four Agencies. Their charge is to ensure that these RAPs and the Lake St. Clair management plans proceed in a timely, consistent manner and that all tasks are completed.
  2. Working Group – This group ensures that technical issues are addressed, mediates disputes, coordinates state, provincial and federal programs and resources and ensures that progress reports are issued in a timely manner. Membership at a minimum consists of representatives from each of the Four Agencies.
  3. Ad-Hoc Technical Teams – Teams of technical experts will be called as needed by the Four Agencies to resolve technical issues and to review RAP and management plan documents.
- The roles and responsibilities of the Four Agencies defined in the Letter of Commitment will apply to all shared AOCs and Lake St. Clair.
  - Working in conjunction with stakeholders, the lead agencies will be primarily responsible for activities such as:
    - preparing, printing, and distributing Progress Reports

- supporting and convening binational meetings
  - facilitating binational communication
  - facilitating binational public involvement and outreach
  - coordinating and facilitating monitoring as appropriate to track progress toward delisting
- The Four Agencies will promote RAP implementation by applying their individual programs and encourage others to do the same by:
    - advocating within respective jurisdictions
    - leading by example
    - creating innovative partnerships where appropriate
    - encouraging creative funding
    - providing information to and involving elected officials
    - promoting multi-media environmental restoration
    - researching and promoting socio-economic/environmental benefits of remediation
  - The Four Agencies are committed to facilitating development of implementation mechanisms for the shared AOCs with local stakeholders and the public. The Four Agencies may contribute funds or other resources, separately or within partnerships, in support of these mechanisms and these implementation mechanisms may be different for each area.

### **Local RAP Implementation Structures**

- Public and stakeholder involvement is an integral part of local RAP structures. These action-oriented local structures will be responsible for:
  - coordinating and facilitating RAP implementation
  - establishing priorities
  - setting targets for restoring impaired beneficial uses
  - seeking funding
  - developing partnerships
  - serving as a vehicle for public and stakeholder activities
  - conducting necessary studies

## 2. Binational Delisting

The Four Agencies have responsibility to coordinate continued development and review of measurable and achievable delisting criteria and will ensure the process used to develop these criteria involves the public and stakeholders. The Four Agencies intend to develop a process for delisting shared AOCs, recognizing differences in each of the AOCs in implementation of this process. The Four Agencies recognize the need to coordinate and facilitate monitoring and surveillance efforts to track progress toward delisting.

### Introduction

The Four Agencies will coordinate a binational AOC delisting process and will coordinate and facilitate efforts to track progress toward delisting.

### Beneficial Use Impairment Re-designation or Removal Criteria Development

#### Principles

- Re-designation or removal criteria for Beneficial Use Impairments (BUIs) for each of the St. Marys, St. Clair, and Detroit River AOCs will be developed by the AOC lead (State or the local Remedial Action Plan Committee) in consultation with the local Public Advisory Councils (PACs), reviewed by the Four Agency Management Committee, and finalized through respective state/provincial and federal programs.
- Re-designation or removal criteria for each BUI may be domestic or binational.
- Re-designation or removal criteria may be periodically reviewed as required based on availability of new science, policy, technology or where environmental conditions warrant.
- All re-designation or removal criteria must be:
  - measurable (quantitative endpoint that determines when a beneficial use is no longer impaired);
  - achievable (reflective of local conditions and respects existing regulations and guidelines);
  - be consistent with the applicable federal and state/provincial regulations, objectives, guidelines, standards and policies, when available, and the principles and objectives embodied in Annex 1 and supporting parts of the Great Lakes Water Quality Agreement (GLWQA);
  - amenable to actions that will remedy original or on-going cause of impairments.
- In each of the AOCs the Four Agency Working Group will ensure binational consultation during the development of the re-designation or removal criteria.

- As re-designation or removal criteria for BUIs in the AOC are drafted, or revised, they will be submitted to the Four Agency Management Committee for review, comments will be provided back to the local AOC.

## **Re-Designation of Removal of a Beneficial Use Impairment**

### Principles

- Re-designation or removal of a BUI may be undertaken binationally or domestically, depending upon the requirements of the approved delisting criteria.
- The Agencies value the support of the local community in the BUI redesignation process and will strive to address their concerns before proceeding to redesignation.
- Re-designation to remove a BUI from the list of impaired beneficial uses in an AOC can occur if it can be demonstrated that:
  - approved delisting criteria for that BUI have been met;
  - the impairment is not local in its geographic extent, but is typical of lake-wide, or Great Lakes basin-wide, conditions. Such re-designation would be contingent on evidence that sources within the AOC are removed or controlled; or
  - the impairment is due to natural rather than human causes.
- Once a BUI has been re-designated for removal from the list of impaired uses, no further assessment of the BUI is required in the delisting process for the AOC. Waters within the AOC will continue to be monitored under ongoing, routine federal, state and provincial monitoring programs.

### Process

- The AOC leads (State or RAP Committee), working domestically or binationally, in consultation with the PAC or Binational Public Advisory Committee (BPAC) recommends redesignation or removal for a BUI and prepares documentation and data to substantiate the recommendation. The recommendation and the documentation and data are submitted to the Four Agency Management Committee for review.
- The Four Agency Working Group ensures binational consultation on the documentation and data substantiating the recommendation on the redesignation or removal of the BUI prior to review by the Four Agency Management Committee.
- Once the BUI re-designation or removal recommendation has been reviewed by the Four Agency Management Committee, comments are provided back to the AOC lead (State or RAP Committee) for final decision through respective state/provincial or federal programs.
- The U.S. or Canadian federal government as the case may be, officially informs in writing their counterpart agency, other agencies, stakeholders and the community members of the BUI re-designation or removal decision through the transmittal of a letter along with a copy of the final BUI re-designation recommendation.

## **Delisting an Area of Concern**

### Principles

- Delisting should be pursued on a case-by-case basis, domestically or binationally, and in consideration of the following:
  - all beneficial use impairments have been removed or re-designated as unimpaired, e.g., delisting criteria have been met;
  - the Agencies have solicited review and comment from the public and have appropriately addressed the concern of the local community relative to delisting;
  - environmental conditions based on sound science confirm restoration of beneficial uses with no trans boundary concerns.
- An AOC can be redesignated as an Area of Concern in Recovery as per the GLWQA, either domestically or binationally, when all remedial actions identified in the RAP have been implemented and monitoring confirms that recovery is progressing in accordance with the RAP.

### Process

- The AOC lead (State or RAP committee), working domestically or binationally, in consultation with the PAC or BPAC prepares a recommendation to delist the AOC or to redesignate it as an AOC in Recovery. An accompanying RAP Completion Report is prepared to substantiate the recommendation. The recommendation and RAP Completion Report are submitted to the Four Agency Management Committee for review.
- The Agencies solicit review and comments from appropriate federal agencies, State and Provincial governments, Tribal Governments, First Nations, Metis, Municipal Governments, watershed management agencies, BPACs/PACs, and other local public agencies, the Public, and the International Joint Commission.
- After considering all of the comments received from the Four Agency Management Committee and the public consultation process, the AOC lead (State or RAP committee) finalizes the recommendation and report and transmits them to the appropriate agency (federal/provincial/state) for final review.
- If warranted by their review, the U.S. or Canadian federal government acts on the recommendation by officially removing the AOC from the list of AOCs or declaring it an AOC in Recovery.
- The U.S. or Canadian federal government as the case may be, officially informs in writing their counterpart agency, other agencies, stakeholders and the community members of the AOC delisting or AOC in Recovery designation decision through the transmittal of a letter along with a copy of the final RAP Completion Report.

### 3. Public Involvement and Outreach

#### Letter of Commitment References

3.1 The Four Agencies have collective responsibility to ensure public and stakeholder involvement is an integral part of the RAP process.

3.2 The Four Agencies are committed to taking leadership for celebration of implementation successes, including formal recognition of the contribution towards implementation by volunteers or specific implementers.

1.7 The Four Agencies are committed to facilitating development of implementation mechanisms for the shared AOCs with local stakeholders and the public. It is recognized that the Four Agencies may contribute funds or other resources, separately or within partnerships, in support of these mechanism and that these implementation mechanisms may be different for each shared AOC.

2.1 The Four Agencies have responsibility to coordinate continued development and review of measurable and achievable delisting criteria and will ensure the process used to develop these criteria involves the public and stakeholders.

4.1 The Four Agencies intend to develop one format for reporting progress to both the International Joint Commission and the public. These Progress Reports, developed in conjunction with local stakeholders, are to be submitted jointly by the Four Agencies upon agreement to their contents. The focus of the Progress Reports will be to reflect progress in implementation, update technical information, assess progress toward achieving the delisting criteria, as well as highlighting progress towards achieving priorities defined by previous reports.

5.1 The Four Agencies recognize that their leadership will be an important factor in the cleanup of the shared AOCs. Four Agency leadership is to be demonstrated by visibility, by empowering local leadership, by contributing to and facilitation implementation activities, by recognizing successes, by actively pursuing solutions to problems, by helping to define research needs and gaps and by facilitation the transfer of information and methodologies.

Note: The Lake St. Clair Management Plan structure was not in place at the signing of the 1998 Four Agency Letter of Commitment. The management of Lake St. Clair is being conducted domestically; however, activities are coordinated through the Four Agencies and take into account impacts to and from the adjacent AOCs.

## Introduction

This position paper addresses public involvement and outreach as part of the Remedial Action Plan (RAP) process in the binational Areas of Concern (AOCs), and the management plan for Lake St. Clair.

The agencies will support local, national, and international actions through grants and in-kind participation. Those activities are intended to:

- maintain public interest in and awareness of the St. Marys, St. Clair and Detroit Rivers AOC, and Lake St. Clair;
- provide a continuing basis for broader community support;
- facilitate funding and partnership opportunities.

In order to support and promote public involvement and outreach in the AOCs and Lake St. Clair, the Four Agencies may contribute, if available, financial and/or in-kind support for the following core binational public involvement activities:

1. Reports (see **Progress Reporting** section of this Compendium): A report for each of the AOCs and Lake St. Clair which highlights restoration activities and progress toward addressing BUIs will be incorporated into the Lake Huron Lakewide Action and Management Plan (LAMP) for the St. Marys River and the Lake Erie LAMP for the St. Clair River, Lake St. Clair and Detroit River.
2. Areas of Concern and Lake St. Clair meetings/workshops:  
The Four Agencies may support local and binational RAP and Lake St. Clair management related meetings and workshops whose objectives include:
  - reporting on accomplishments and environmental progress;
  - heightening public awareness and support of RAP and management plan implementation and issues;
  - periodic reviewing of delisting criteria;
  - identifying priority projects and funding opportunities;
  - recognizing volunteers and implementers;
  - facilitating information sharing and coordination of activities;
  - acclaiming successes.
3. Electronic information sharing:  
The Four Agencies will make an effort to ensure that information about the AOCs and Lake St. Clair (e.g., Management plans, RAPs, and Reports) are available online through sites such as the Great Lakes Information Network (GLIN) and binational.net web sites and local RAP web sites.
4. Fact sheets, news releases and periodic updates: The Four Agencies may collaborate and provide financial and in-kind support for creating and distributing fact sheets, technical reports, news releases, and other periodic updates on activities.

## **Other Activities**

In addition to the above, the Four Agencies may provide support for other public involvement activities, on an AOC or Lake St. Clair-specific basis, such as:

- education programs
- tours
- displays
- forums or workshops on specific topics

## 4. Progress Reporting

### Letter of Commitment References

4.1 The Four Agencies intend to develop one format for reporting progress to both the International Joint Commission and the public. These Progress Reports, developed in conjunction with local stakeholders, are to be submitted jointly by the Four Agencies upon agreement to their contents. The focus of the Progress Reports will be to reflect progress in implementation, update technical information, assess progress toward achieving the delisting criteria, as well as highlighting progress towards achieving priorities defined by previous reports.

In response to section 4.1 of the Four Agency Letter Of Commitment, GLWQA Annex 1 requires a report be produced for all AOCs (including St. Mary's River, St. Clair River, and Detroit River) every three (3) years. A report on Lake St. Clair, the St. Clair River and the Detroit River will be produced as part of the Lake Erie LAMP every five years. A report on the St. Marys River will be produced as part of the Lake Huron LAMP every five years.

These reports are not meant to substitute other forms of information that may be developed periodically such as newsletters, websites and technical reports.

# Appendix 1

## Four Agency Letter of Commitment

### LETTER OF COMMITMENT

#### **A FOUR AGENCY FRAMEWORK OF ROLES AND RESPONSIBILITIES FOR THE IMPLEMENTATION OF THE DETROIT RIVER, ST. CLAIR RIVER AND ST. MARYS RIVER SHARED REMEDIAL ACTION PLAN**

1 - WHEREAS the governments of Canada and the United States entered into the Great Lakes Water Quality Agreements of 1972 and 1978 (herein referred to as the GLWQA) and reaffirmed their determination to restore and enhance water quality in the Great Lakes System with the signing of amendments as proclaimed in the 1987 Protocol to the GLWQA which, among other things, commits Canada and the United States, in cooperation with other jurisdictions, to undertake the development and implementation of Remedial Action Plans (RAPs) for Areas of Concern (AOCs);

2 - AND WHEREAS in accordance with Part 1 of the Canada Water Act, Canada and Ontario entered into an Agreement Respecting Great Lakes Water Quality in 1971 and renewed in 1976, 1982, 1986 and 1994 in order to implement the GLWQA and for which specific targets were agreed to for Canadian and shared RAPs;

3 - AND WHEREAS the United States Federal government and the State of Michigan have defined roles for the development and implementation of RAPs under the 1972 Clean Water Act, as amended by the Great Lakes Critical Programs Act of 1990, in support of the goals agreed to under the GLWQA;

4 - AND WHEREAS the State of Michigan and the Province of Ontario, under a 1985 Letter of Intent, committed to leadership roles for the development but not the implementation of RAPs for three of the binational rivers: the Detroit River, the St. Clair River, and the St. Marys River (hereinafter referred to as the shared AOCs);

5 - AND WHEREAS Environment Canada, the Ontario Ministry of Environment, the United States Environmental Protection Agency, and the Michigan Department of Environmental Quality (herein referred to as the Four Agencies) are all committed to the restoration of the shared AOCs and to ensuring stakeholder and public involvement;

THEREFORE the Four Agencies, recognizing the mutual benefits of cooperating on matters of binational interest, recognizing that restoration of the boundary waters cannot be achieved independently by any one Agency and recognizing that each of the Four Agencies is accountable to their citizens for continued environmental improvement and protection, herein intend to implement the following roles and responsibilities:

#### **1. Administration:**

1.1 The Four Agencies recognize that each has responsibilities to support commitments made in the GLWQA as well as responsibilities under its

respective regulatory system which each Agency will continue to adhere to.

- 1.2 The Four Agencies recognize the need to cooperate to achieve the goals outlined in each shared AOC as well as the need for each Agency to accomplish this through their individual distinctive forms of government, institutional arrangements, and approaches to RAP development and implementation.
- 1.3 The roles and responsibilities of the Four Agencies defined in this Letter of Commitment will apply to all shared AOCs.
- 1.4 Canadian Agencies are to have the primary responsibility for the administration of the shared activities for the St. Marys and St. Clair RAPs, and the U.S. Agencies are to have the primary responsibility for the administration of the shared activities for the Detroit River RAP.
- 1.5 The Four Agencies intend to identify a contact/liaison for each of the shared AOCs.
- 1.6 The Four Agencies recognize that part of the shared accountability is to promote RAP implementation and to persuade other implementors to undertake remedial work within the appropriate jurisdiction.
- 1.7 The Four Agencies are committed to facilitating development of implementation mechanisms for the shared AOCs with local stakeholders and the public. It is recognized that the Four Agencies may contribute funds or other resources, separately or within partnerships, in support of these mechanisms and that these implementation mechanisms may be different for each shared AOC.

## **2. Binational Delisting:**

- 2.1 The Four Agencies have responsibility to coordinate continued development and review of measurable and achievable delisting criteria and will ensure the process used to develop these criteria involves the public and stakeholders.
- 2.2 The Four Agencies intend to develop a process for delisting shared AOCs recognizing differences in each of the AOCs in implementation of this process.
- 2.3 The Four Agencies recognize the need to coordinate and facilitate monitoring and surveillance efforts to track progress towards delisting.

## **3. Public Involvement and Outreach:**

- 3.1 The Four Agencies have collective responsibility to ensure public and stakeholder involvement is an integral part of the RAP process.

- 3.2 The Four Agencies are committed to taking leadership for celebration of implementation successes, including formal recognition of the contribution towards implementation by volunteers or specific implementers.

#### **4. Progress Reporting:**

The Four Agencies intend to develop one format for reporting progress to both the International Joint Commission and the public. These Progress Reports, developed in conjunction with local stakeholders, are to be submitted jointly by the Four Agencies upon agreement to their contents. The focus of the Progress Reports will be to reflect progress in implementation, update technical information, assess progress towards achieving the delisting criteria, as well as highlighting progress towards achieving priorities defined by previous reports.

#### **5. Leadership:**

- 5.1. The Four Agencies recognize that their leadership will be an important factor in the cleanup of the shared AOCs. Four Agency leadership is to be demonstrated by visibility, by empowering local leadership, by contributing to and facilitating implementation activities, by recognizing successes, by actively pursuing solutions to problems, by helping to define research needs and gaps and by facilitating the transfer of information and methodologies.
- 5.2 The Four Agencies acknowledge that, as defined in the GLWQA, the Federal Governments have committed to cooperate with State and Provincial Governments in the development and implementation of RAPS.

#### **6. Commitment:**

- 6.1 This Letter of Commitment reflects the firm commitment of the Four Agencies to implement the above-mentioned actions, without giving rise to legal obligations on the governments or on the public.

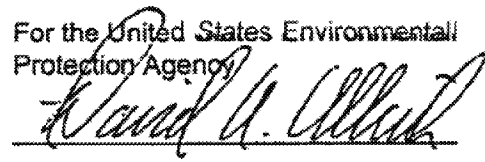
#### **7. Endorsement:**

We the undersigned hereby accept the terms of this Letter of Commitment, signed at Windsor, Ontario, Canada this 17th day of April 1998:

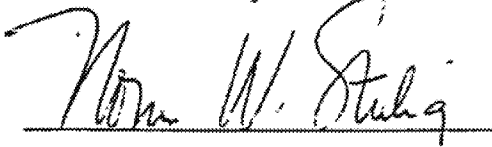
For Environment Canada

A handwritten signature in black ink, appearing to be "Christian D. Smith", written over a horizontal line.

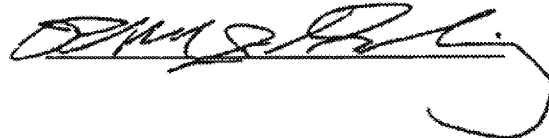
For the United States Environmental  
Protection Agency

A handwritten signature in black ink, appearing to be "David A. Ullrich", written over a horizontal line.

For Ontario Ministry of the Environment

A handwritten signature in black ink, appearing to be "Norm W. Stuhlg", written over a horizontal line.

For the Michigan Department of  
Environmental Quality

A handwritten signature in black ink, appearing to be "Dennis R. ...", written over a horizontal line.

## **Appendix 2**

### **Working Group Contacts**

The following are the designated agencies of the Working Group. These agency representatives will serve as the initial point of contact for the Four Agency Letter of Commitment on the shared Remedial Action Plans (RAPs) and for any questions or comments related to the position papers.

#### **Environment and Climate Change Canada**

Great Lakes Areas of Concern  
Environment Canada, Ontario Region  
4905 Dufferin Street, Downsview, Ontario  
M3H 5T4

#### **United States Environmental Protection Agency**

U.S. Environmental Protection Agency  
Great Lakes National Program Office  
77 W. Jackson Boulevard (G-17J)  
Chicago, Illinois 60604-3511

#### **Michigan Department of Environment, Great Lakes & Energy**

Michigan Department of Environment, Great Lakes & Energy  
525 West Allegan Street  
Lansing, Michigan 48909-7528

#### **Ontario Ministry of the Environment, Conservation and Parks**

Ontario Ministry of the Environment, Conservation and Parks  
Southwestern Regional Office  
733 Exeter Road, London, Ontario  
N6E 1L3

## **Appendix 3**

### **Dispute Resolution**

#### **Introduction**

The Four Agencies will do their utmost to cooperate to restore the shared Areas of Concern (AOCs). However, disputes between the Agencies or between parties involved in the shared Remedial Action Plans (RAPs) may occur. In order to ensure that disputes are settled rapidly, consistently, and in the fairest manner possible, the following procedures have been developed. This process is intended to be both simple and flexible.

The dispute resolution process is not intended to replace consensus-based decision making and/or conflict resolution tools at the disposal of local implementation committees including committee procedural process, neutral facilitation, vote by committee, or other tools. The Working Group is available to informally assist RAP participants in resolving disputes. The following formal arbitration process should be invoked only after all attempts to resolve a dispute have been exhausted.

#### **Dispute Resolution Process**

The Working Group will be responsible for facilitating resolution of disputes that may arise between RAP participants, including:

1. The federal, provincial, and state governments
2. Ad hoc committees
3. RAP Implementation Groups

These procedures apply only to disputes concerning the scope, content or implementation of the shared RAPs.

#### **Format of a Notice of Dispute**

A group initiates the dispute resolution procedures by submitting a formal Notice of Dispute to the Working Group and to the other party(ies) in dispute. The Notice of Dispute should be limited to two pages in length if possible. The format of the Notice of Dispute consists of the following elements:

1. name of the group initiating the dispute resolution process
2. other party(ies) to the dispute
3. nature of the dispute
4. a statement of position
5. brief technical and legal support for the stated position
6. actions taken to resolve the dispute

## **Dispute Arbitration Procedures**

1. The disputing parties shall first make all reasonable attempts at settlement through other means of resolution. The dispute resolution process begins when a written Notice of Dispute is sent by mail, facsimile or e-mail to the Working Group and other parties to the dispute.
2. The Working Group will request all parties to submit a statement of their issues, similar in format to the Notice of Dispute. The parties must submit this information within twenty (20) working days of notification from the Working Group. During this period the parties should continue to engage in further negotiations to resolve the dispute.
3. If the parties to the dispute cannot resolve it informally through discussions, then within fifteen (15) working days after the completion of step #2 the Working Group will convene and render a decision with management concurrence. The decision reached by the Working Group and approved by the Four Agency Management Committee will be one of the following:
  - a. a resolution to the dispute
  - b. an assignment of an outside expert to further mediate the dispute
  - c. a request for more information or time to reach a decision, including a description of the additional information that is needed or a deadline for delivering the decision
  - d. an elevation of the dispute to the Four Agency Management Committee
  - e. remand to the parties to resolve
4. All draft dispute resolutions proposed by the Working Group shall be sent to the Four Agency Management Committee for concurrence. If the Four Agency Management Committee does not concur with the proposed resolution, the Working Group will revise the resolution in accordance with their suggestions.

Invocation of the dispute resolution procedures outlined above shall not operate to the prejudice of any party. Any party will remain free to challenge federal, provincial or state action as allowed under law.

# Sample Notice of Dispute

## NOTICE OF DISPUTE

Date:

Initiating Party:

Other Parties to the Dispute: *List any party in opposition to the position advocated by the initiating party.*

Background: *Provide information on the technical and/or programmatic issue that is under dispute, including information on the nature and causes of the dispute.*

Statement of Position: *A brief summation of the position advocated by the initiating party.*

Justification: *A brief statement of why the position advocated is correct.*

Action Taken: *Steps taken to date to resolve the dispute. Such actions can include the following examples:*

- 1. Discussions with the binational steering committee*
- 2. Vote by the steering committee and all subcommittees*
- 3. Neutral facilitation*
- 4. Discussion with counterpart groups from the other binational RAPs*